LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
SEP 12 1973
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1973

NO. 73-290

LORENZO DOUGLAS

Petitioner,

vs.

THE STATE OF ARIZONA
and
GARY K. NELSON,
as Attorney General of the State of Arizona,

Respondent,

SUPPLEMENTAL BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

and

REPLY BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

Gary K. Nelson,
Attorney General
159 State Capitol
Phoenix, Arizona 85003

Attorney for
Respondent

Larry S. Rosenthal
Schroeder, Soelter & Rosenthal, P.C.
940 South Craycroft
Tucson, Arizona 85711

Attorney for
Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

NO. 73-290

LORENZO DOUGLAS,

Petitioner,

vs.

STATE OF ARIZONA and
GARY K. NELSON, as
Attorney General of
the State of Arizona,

Respondent.

SUPPLEMENTAL BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

a n d

REPLY BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

INDEX

SUPPLEMENTAL BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA.....1.

REPLY BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA.....4.

CONCLUSION.....6.

PROOF OF SERVICE .....8.

CASE CITATIONS

State vs. Murray
509 P.2d 1003
(Court of Appeals,
Washington, May 15, 1973) .....1.

Coolidge vs. New Hampshire
403 U.S. 443
91 S.Ct. 2022
22 L.Ed2d 564 (1971).....3,5 & 6.

Terry vs. Ohio
392 U.S. 1
88A S.Ct. 1868
20 L.Ed2d 889 (1968).....4,5 & 6.

SUPPLEMENTAL BRIEF TO THE
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF ARIZONA

This supplemental brief is made pursuant to Rules of the Supreme Court, Rule 24, Paragraph 5.

Defendant submits this case as directly in point to the case at bar. The case is State vs. Murray, 509 P.2d 1003 (Court of Appeals, Washington, May 15, 1973). The relevant facts are essentially as follows:

Defendants MURRAY and SIMPSON were charged with the crime of grand larceny by knowingly possessing a Sony television set with knowledge that it had been stolen, and they appealed from a jury verdict of guilty.

The relevant facts were as follows:

An informant had told the police about certain stolen property in one Apartment Number One, where the informant had been living. While conducting a valid search of Apartment Number One, an officer noticed a letter from

Defendant SIMPSON to the informant, mentioning that Defendant SIMPSON was living with the Defendant MURRAY in Apartment Number Eleven. (The informant had also told the officers that she thought that there was also some stolen property within Apartment Number Eleven). Later that day, the officers questioned Defendant SIMPSON for purely investigative purposes, as to the whereabouts of one Stigall, who the officers wanted for burglary. They asked for permission to search Defendant SIMPSON's Apartment Number Eleven. SIMPSON asked what they were looking for, at which time the officers told her that they were looking for office and video equipment, such as typewriters and calculators. She then gave them consent to search her apartment for the items that the officers told her that they were looking for. While searching the apartment, the officers took the serial number from a television set located within the apartment and wrote it down. After the officers left, they checked out the

serial number to determine whether the television had been stolen in any particular crime. Upon discovering that the television was, in fact, stolen, they obtained a search warrant, returned to the apartment, and seized the television set for use as evidence against the Defendant.

The Court, after finding that the police had consent to be in the apartment, considered whether or not the television set was admissible under the "plain view" doctrine, using Coolidge vs. New Hampshire, 403 U.S. 443, 91 S.Ct.2022, 21 L.Ed2d 564 (1971), as controlling authority for their holding that the seizure of the serial number of the television set and the subsequent seizure of the set itself, was improper because:

"The officers did not possess the requisite immediate apparent knowledge upon which they could reasonably conclude under the "plain view" doctrine they had incriminating knowledge before them, as required by Coolidge vs. New Hampshire..."

suspicion or constituted any suspicious activities as existed in Terry vs. Ohio.

Also, Petitioner would like to point out to the Court that Respondent is using Terry vs. Ohio as both a sword and a shield at the same time and with one factual situation. They say that, using Terry, the officer was justified in inspecting the pistol because an "exigent circumstance" (if you will) existed, using as a rationale the lenghthy quotation from Terry, mentioned, supra. And then Respondent turns around and says on page 6 of its Brief that "since the object was not removed from the person of JUARIQUE, the principles governing frisk do not apply."

Therefore, the question is (and this is what we ask the Court) what standards are to be applied in this kind of situation. We think that Coolidge vs. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 21 L.Ed2d 564 (1971), limited the seizure of items within "plain view" to be those which are obvious fruits of

a crime or contraband. Indeed, the case mentioned, supra, in our Supplemental Brief, which is directly in point, seems to think so. But Respondent's standard is just that:

> "It was not unreasonable for him to make a mental note of the serial number which was readily ascertainable to him upon close examination of the pistol."

Petitioner feels that the Court needs to make definite Its standards regarding the "plain view" doctrine by reaffirming Coolidge, for if the decision in the case at bar is allowed to stand, the impact of Coolidge will be all but lost and the reach of Terry vs Ohio and its "watered" version, will be now used to justify "Plain view" seizures in factual situations where Terry was never intended to have application.

CONCLUSION

Either the Supreme Court is going to apply and reaffirm the common sense principles of Coolidge, or the laws concerning

search and seizure here will be thrown into increased confusion. Petitioner urges the Court to reverse the State Court's decision.

Respectfully Submitted,

SCHROEDER, SOELTER & ROSENTHAL, P.C.

By: LARRY S. ROSENTHAL

LARRY S. ROSENTHAL
940 South Craycroft
Tucson, Arizona 85711
Attorneys for Petitioner

PROOF OF SERVICE

STATE OF ARIZONA)
: SS.
COUNTY OF PIMA)

I, LARRY S. ROSENTHAL, Attorney for LORENZO DOUGLAS, Petitioner, depose and say that on the 10th day of Sept., 1973, I served three (3) copies of the foregoing Supplemental Brief to the Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona and Reply Brief to the Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona on GARY K. NELSON, Attorney General for the State of Arizona, Respondent herein, by depositing the same in a United States Post Office mail box, with first class postage prepaid, addressed to him at his post office address.

Larry S. Rosenthal
LARRY S. ROSENTHAL

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of August, 1973.

My Commission Expires:
February 22, 1977

Laura J. Hirst
NOTARY PUBLIC